

[Skip to main content](#)**1972CV00164 The Haven Center, Inc. et al vs. TOWN OF BOURNE et al**

- Case Type
- Equitable Remedies
- Case Status
- Open
- File Date
- 04/09/2019
- DCM Track:
- A - Average
- Initiating Action:
- Declaratory Judgment G.L. c. 231A
- Status Date:
- 04/09/2019
- Case Judge:
-
- Next Event:
- 05/10/2019

[All Information](#)[Party](#)[Event](#)[Tickler](#)[Docket](#)[Disposition](#)**Party Information****The Haven Center, Inc.**

- Plaintiff

[Alias](#)**Party Attorney**

- Attorney
- Zehnder, Esq., Benjamin E
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- 556519
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[More Party Information](#)**MacArthur Park Place LLC**

- Plaintiff

[Alias](#)**Party Attorney**

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- Defendant

[Alias](#)**Party Attorney**

- Attorney
- Troy, Esq., Robert Sweeney
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- Troy Wall Associates
- 90 Old Kings Highway
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Town of Bourne
- Defendant

Alias

Party Attorney

- Attorney
- Troy, Esq., Robert Sweeney
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Events

Date	Session	Location	Type	Event Judge	Result
05/10/2019 09:30 AM	Second Session	Courtroom 2	Rule 16 Conference	Cannone, Hon. Beverly J	

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	04/09/2019	07/08/2019	90	
Answer	04/09/2019	08/07/2019	120	
Rule 12/19/20 Served By	04/09/2019	08/07/2019	120	
Rule 12/19/20 Filed By	04/09/2019	09/06/2019	150	
Rule 12/19/20 Heard By	04/09/2019	10/07/2019	181	
Rule 15 Served By	04/09/2019	06/02/2020	420	
Rule 15 Filed By	04/09/2019	07/02/2020	450	
Rule 15 Heard By	04/09/2019	07/02/2020	450	
Discovery	04/09/2019	03/29/2021	720	
Rule 56 Served By	04/09/2019	04/28/2021	750	
Rule 56 Filed By	04/09/2019	05/28/2021	780	
Final Pre-Trial Conference	04/09/2019	09/27/2021	902	
Judgment	04/09/2019	04/08/2022	1095	
Status Review	04/10/2019	04/22/2019	12	

Docket Information

Docket Date	Docket Text	File Ref Nbr.
04/09/2019	ORDER: Order of Transfer and Assignment of Land Court Case No. 19 MISC 000009 to Barnstable Superior Court (See image for full text). [Awaiting pleadings from Land Court]	1
04/09/2019	COMPLAINT FILED	2
04/09/2019	ORDER: For Notice By Publication Judge: Vhay, Hon. Michael D	3
04/09/2019	The Haven Center, Inc.'s Memorandum Joint Case Management Conference Statement	4

Docket Date	Docket Text	File Ref Nbr.
04/09/2019	Order of Notice by Publication, returned SERVED Applies To: TOWN OF BOURNE (Defendant); Town of Bourne Member or alternate member of Board of Selectmen (Defendant)	5
04/09/2019	ORDER: After case management conference and initial intervention held. All parties appeared through counsel. Plaintiffs contend that (1) Bourne's general bylaw regarding non-medical cannabis facilities violates the Zoning Act, and (2) the Town's selectmen improperly have refused to negotiate a "host community agreement" (the "HCA") with Plaintiffs. The Town argues that its general bylaw is lawful and that, in fact, one of the Plaintiffs terminated negotiations over the HCA issue. Accordingly, unless Plaintiffs sooner dismiss their HCA-related claims, the Court ORDERS Plaintiffs to file by February 14, 2019 a memorandum explaining why the Land Court has subject-matter jurisdiction to over Plaintiffs' HCA issues. The Court ORDERS the Town to file within fourteen days of receipt of Plaintiffs' memorandum any responsive memorandum. All parties assent to receiving notice from the Court via electronic mail instead of regular mail. SO ORDERED. (Michael D. Vhay, Justice) (No document received from Land Court as of 04/09/2019)	6
04/09/2019	ANSWER FILED by Robert S. Troy, Esq., for TOWN OF BOURNE and for Town of Bourne Member or alternate member of Board of Selectmen	7
04/09/2019	Plaintiffs The Haven Center, Inc., MacArthur Park Place LLC's Motion to dismiss certain counts (Counts III and IV)	8
04/09/2019	Plaintiffs(s) The Haven Center, Inc., MacArthur Park Place LLC motion filed for protective order	9
04/09/2019	Endorsement on Motion to dismiss certain counts (#7.0): Other action taken The Court has received Plaintiffs' Motion to Dismiss Counts III and IV of their Complaint. The Court ORDERS any party who opposes that motion to file its opposition no later than 03/01/2019. The Court also has received Plaintiffs' Motion for Protective Order. The Court DENIES that motion, without prejudice, as the motion doesn't comply with Land Court Rule 7. Plaintiffs may renew the motion once they have filed the certificate described in Rule 7. SO ORDERED. (No document received from Land Court as of 04/09/2019)	
04/09/2019	Plaintiffs(s) The Haven Center, Inc., MacArthur Park Place LLC motion filed for protective order (Renewed)	10
04/09/2019	Endorsement on motion for protective order (#9.0): (Renewed) Other action taken The Court has received Plaintiffs' Renewed Motion for Protective Order. The Court ORDERS any party who opposes that motion to file its opposition no later than 03/01/2019. SO ORDERED. (No document received from Land Court as of 04/09/2019)	
04/09/2019	Opposition to P#7, Plaintiffs' Motion to Dismiss Counts III and IV filed by Robert S. Troy, Esq., for defendants	11
04/09/2019	Opposition to P#8, Plaintiffs' Motion for Protective Order filed by Robert S. Troy, Esq., for defendants	12
04/09/2019	MEMORANDUM & ORDER: The Court has received Plaintiffs' Motion to Dismiss Counts III and IV of their complaint. The Court DENIES the motion. Counts III and IV seek a declaratory judgment and a writ of mandamus in connection with an alleged refusal by the defendant Bourne Selectmen to enter into a "host community agreement" with Plaintiffs under G.L. c. 94G, sec. 3. At the case-management conference in this matter, the Court questioned its subject matter jurisdiction over Counts III and IV. The Court gave Plaintiffs until February 14, 2019 to either dismiss the Counts or submit a memorandum explaining why the Court had subject-matter jurisdiction over them. Plaintiffs chose the former course, and asked that the Court dismiss Counts III and IV without prejudice. The Bourne Selectmen oppose the motion: having answered Plaintiffs' complaint, the Selectmen want their day in court or a dismissal with prejudice. See Rule 41(a)(2), under Mass. R. Civ. P. Where a complaint in the Land Court presents some claims that are within the Court's jurisdiction (for example, Counts I and II of Plaintiffs' complaint), and others that aren't (like Counts III and IV), "the court should not dismiss the case out of hand; rather, 'the proper procedure is for the judge to ask the Chief Administrative Justice to transfer the case, or the judge, or both, to the appropriate department of the Trial Court.'" Arno v. Commonwealth, 457 Mass. 434, 446 (2010), quoting Konstantopoulous v. Whately, 384 Mass. 123, 129 (1981). See also Sullivan v. Lawlis, 93 Mass. App. Ct. 409, 416 (2018) (same). Since the Selectmen demand a resolution of Counts III and IV on the merits, this Court will request either a transfer of this case to the Barnstable Superior Court (with a justice of the Superior Court being designated a justice of this Court for purposes of deciding Count I, which is within this Court's exclusive jurisdiction) or designation of a justice of this Court as a justice of the Superior Court for purposes of hearing Counts III and IV. Pending a ruling on this Court's request for transfer or interdepartmental assignment, the Court STAYS all action on Counts III and IV of the Complaint, including any discovery relating solely to Counts III and IV. The Court otherwise ORDERS the parties to complete all discovery (fact and expert) on Plaintiffs' claims in Counts I and II by May 3, 2019. (Plaintiffs also have filed a motion for a protective order. To the extent that the motion seeks to prevent discovery on issues relating to Counts I and II, the motion is DENIED, but any discovery relating solely to Counts III and IV is nonetheless stayed.) SO ORDERED. Judge: Vhay, Hon. Michael D (No document received from Land Court as of 04/09/2019)	
04/10/2019	NOTICE TO APPEAR FOR Rule 16 Scheduling Conference on 05/10/2019 at 9:30 AM, mailed on 04/10/2019 to BEZ and RST.	

Case Disposition

Disposition	Date	Case Judge
Pending		